No. 1296. *Of September Term, 1877.*

In the Court of Common Pleas, No. 1,

OF PHILADELPHIA COUNTY.

IN EQUITY.

17

HENRY J. WILLIAMS, Esq., Executor and Trustee of the Will of James Rush, M. D.,

vs.

THE LIBRARY COMPANY of PHILADELPHIA *et al.*

THE SEPARATE ANSWER OF THE LIBRARY COMPANY OF PHILADELPHIA.

WM. HENRY RAWLE,
R. C. McMURTRIE.

Allen, Lane & Scott's Printing House, 233 South Fifth Street, Philadelphia.

In the Court of Common Pleas, No. 1, for the County of Philadeiphia.

IN EQUITY.

Henry J. Williams, Esquire, Executor and Trustee of the Will of James Rush, M. D.,	September Term, 1877.
vs.	No. 1296.
The Library Company of Philadelphia et al.	

The Separate Answer of the Library Company of Philadelphia.

I. We admit the death of the said testator, as stated in the bill, and believe that his will and codicils, so far as therein set forth, are correctly stated, but for greater certainty crave leave to refer to the original or a duly certified copy thereof, and we further admit that letters testamentary thereon were duly granted to the complainant as stated by him.

II. We believe that the complainant has erected upon the lot bounded by Broad, Carpenter, Christian and Thirteenth streets, a building in accordance with the directions and requirements of the said will and codicils, and that the same is now completed and ready for occupation.

We admit that on the fourth day of June, 1877, the complainant notified us that the said building was ready for our acceptance and that his account as executor and trustee was about to be filed. We annex hereto a copy of his said communication, being part of Exhibit A, which we pray may be taken as part of our answer.

III. We believe that the complainant has duly settled his account as executor.

IV. We believe that the statements in the bill as to the surviving annuitants under the said will are correct, as also that the testator's estate yields a net annual income much in excess of their aggregate, and we are advised that, as the complainant has stated, a conveyance to the person or corporation entitled thereto, if made subject to said annuities, will secure their payment.

V. And as to and concerning so much of the complainant's bill as sets forth that he is ignorant whether we are willing to accept the bequests and devises in our favor, upon the conditions imposed by the testator—or even, if willing, whether or not we have complied with all the preliminary conditions requisite to entitle us to receive a conveyance of said lot and building and of the unexpended residuary estate—as to both of which questions discovery is prayed, we further answer as follows:—

1. At a meeting of our members (sometimes called shareholders or stockholders) duly convened on the 20th of October, 1869, there was duly adopted the following resolution:—

"*Resolved*, That the stockholders of the Library Company of Philadelphia do hereby accept the legacy of Dr. James Rush according to the terms expressed in his will."

Part of these terms was that we should, either by an alteration in our charter, or in some other way satisfactory to his executor, bind ourselves and our successors to conform to and comply with certain express conditions under which we were to hold the said property and all other bequests and devises therein or thereafter given to us.

The general act of the Legislature approved the 7th of May, 1855, had provided that where letters patent had been granted by the proprietaries of the province of Pennsylvania, for a purpose where authority to grant charters was or might be vested in the court, it should be lawful for such court to alter, amend and improve the same, upon like proceeding and with like effect as if the original charter had been granted by the court.

And inasmuch as the third amendment to the Constitution of 1864 had provided that no bill should be passed by the Legislature granting any powers or privileges in any case where the authority to grant such powers or privileges had been, or might thereafter be, conferred upon the courts of this Commonwealth, we were advised by counsel that the right of the Legislature to directly amend our charter might be doubtful, but that the purposes of the testator's will might and would, more properly, be attained by an act authorizing us to accept his bequest, to act as trustee under his will, and, after such acceptance, to apply to the court, from time to time, for such amendments to our charter as might be necessary to this end.

Such an act to be presented to the Legislature was drafted accordingly, and sent, together with a copy of the said resolution of acceptance, to the complainant, who, on the 4th of January, 1870, acknowledged the receipt thereof, through his counsel, a copy of whose letter, marked Exhibit B, is annexed hereto as part of our answer.

The said act was accordingly presented to the Legislature, passed as it was so originally drafted, and finally approved on the 23d of February, 1870. It is as follows:—

AN ACT

Relative to the Ridgway Branch of the Philadelphia Library.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same,* That the Library Company of Philadelphia be and they are hereby authorized to act as trustees for the Ridgway Branch of the Philadelphia Library and the trusts pertaining thereto, under the last will and codicils of James Rush, late of the city of Philadelphia, doctor of medicine, upon the conditions and provisions therein contained, without limitation as to the yearly value or income of the said trust estate, but in such manner that the real and personal property of the company, including such books, pictures, statues, and other works of literature and art as now are or shall hereafter be held by them in their own right or on any other or different trusts, shall be in no wise affected thereby, but shall remain and be under their own entire and exclusive control and disposition; and the said company are hereby empowered, after acceptance of this act by the members of the said company, to apply from time to time to the Court of Common Pleas for the City and County of Philadelphia, for such further amendments to the charter of the company as may be necessary to carry into effect the conditions and provisions of the said will and codicils in accordance with the directions of this act.

3. After the passage of this act, at a meeting of the said members, duly convened on the 25th of May, 1870, the following resolutions were adopted:—

"*Resolved,* That the Library Company of Philadelphia do accept the provisions of the act of General Assembly

of the Commonwealth approved the twenty-third day of February, 1870, entitled an act relative to the Ridgway Branch of the Philadelphia Library.

"*Resolved,* That the directors be requested to apply to the Court of Common Pleas of Philadelphia County for the following amendments to the charter of the company.

"'PROPOSED AMENDMENT TO CHARTER OF THE LIBRARY COMPANY OF PHILADELPHIA."

"'1. The Library Company of Philadelphia shall hereafter be held and taken to possess all such powers and capacities as may be necessary to enable them to act as trustees under the will of the late Dr. James Rush, according to the provisions of an act of the General Assembly of the Commonwealth, approved on the twenty-third day of February, one thousand eight hundred and seventy (1870), entitled "An act relative to the Ridgway Branch of the Philadelphia Library."

"'2. So long as the library company shall act as such trustees, they shall do so under the following limitations and conditions:—

"'*First.*—Not more than one-fourth of the directors of the library shall belong to any one of the learned professions of law, theology, or medicine; but this shall not operate so as to exclude from re-election any of those who were members of the board at the time of the death of the said Dr. James Rush.

"'*Second.*—The number of shares in the library shall be limited to those actually issued at the time of the death of Dr. Rush, but the managers by their by-laws shall have the authority to allow any respectable persons depositing

an amount and paying an annual sum to be fixed by the board of managers, to have the full and free use of the library as completely as if they were shareholders.

"'*Third.*—The library shall not connect themselves with any other body, corporate or politic.'

"*Resolved*, That in assuming the administration of this munificent endowment, the Library Company desire both to record their high appreciation of the confidence reposed in them by Dr. Rush, and to express on behalf of the community at large a proper acknowledgment of the great benefit which the testator designed for the advancement of literature and science in this city.

"*Resolved*, That the chairman be requested to communicate to Henry J. Williams, Esq., these resolutions, and to convey to him at the same time the thanks of the library company for his long and useful services as a director and the warm interest he has always taken in their welfare.

"*Resolved*, That the joint committee be discharged from the further consideration of the subject."

4. In pursuance of the said resolutions, our memorial was, on the thirty-first day of October, 1870, presented to the Court of Common Pleas aforesaid, setting forth the said act of Assembly and the said resolution of the 25th of May, 1870, and praying that the said amendments might be allowed to be made to the charter of the said company and form a part thereof, according to the act of Assembly in such case made and provided; whereupon it was so proceeded that on the 10th of December, 1870, it was ordered and decreed by the court that the same be deemed and taken to be a part of the instrument upon which the said corporation was formed and established, to all intents and purposes as if the same had been originally made part thereof, and that the said amendments be recorded in the office for recording of deeds in and for said county.

The said memorial, amendments and order of court were, on the 30th of March, 1871, recorded in said office in Miscellaneous Book J. A. H., No. 1, page 145, &c., and a copy thereof, marked Exhibit C, is hereto annexed as part of our answer.

Of these amendments so made, the complainant was duly informed by resolution of our board.

VI. Our said acceptance has never been revoked or withdrawn.

And it is our intention to carry out in good faith the provisions of the testator's will and of the said act of the Legislature, and to remove to the said new building the great bulk of our collection of books, especially including therein those most valuable to the student and most appropriate for the purposes designated by the testator as those of a public library; while at the same time we are advised that it is not necessary to the validity of our acceptance that we should remove thither all our books, of every description, but that that class thereof which may be called current and ephemeral literature, and which the testator intended should be excluded from the Branch Library, may be retained in our present building or some other topographically convenient to the largest number of those who use the same.

VII. Since our said acceptance of the testator's bequest, the following question has, however, arisen :—

By two acts of the Legislature, passed in 1826 and 1839, our library and its building were exempted from taxation.

By the Constitution which went into effect in 1874, it was declared that the General Assembly might, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places

of burial not used or held for private or corporate profit, and institutions of purely public charity, and that all laws exempting property from taxation, other than the property above enumerated, should be void.

The General Assembly did, accordingly, by an act approved the 14th of May, 1874, prescribe that, *inter alia*, all hospitals, universities, colleges, seminaries, academies, associations and institutions of learning, benevolence or charity, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same, founded, endowed and maintained by public or private charity, be exempted from all and every county, city, borough, bounty, road, school and poor tax.

Upon proceedings had in that behalf before the Board of Revision of Taxes of the City of Philadelphia, our building was thereupon marked on the books of the said board as exempt from taxation, by reason of our being an institution of learning and charity within the true intent and meaning of the Constitution and said act of the Legislature; but, nevertheless, the Collector of Delinquent Taxes threatened to proceed at once to the enforcement and collection of said tax, pretending that the said act of the Legislature was unconstitutional and void, and we were, therefore, compelled to institute proceedings to settle and determine that question.

It was considered by us that in case it should be judicially determined that the building so erected, with its ground, was, when occupied by us for our library, liable to taxation, it might be our duty to decline to accept the bequest, as the income of the corporation from the devised estate and all other sources would, after the payment of taxes, be wholly insufficient to maintain the institution. Hence, when the complainants' communication of the 4th of June, 1877, was presented to our directors at their stated meeting on the seventh of that month, they resolved that the complainant be informed of the existence of the questions

connected with taxation, as to which judicial proceedings were about to be instituted, and that a postponement of a decision by us would, if agreeable to the complainant, be advisable. We annex hereto, as part of Exhibit A, the communications which thereupon passed between the complainant and ourselves.

Since then, such proceedings have been had in the premises that on the 22d of December, 1877, it was decided by the Court of Common Pleas, No. 2, in which our bill had been filed, that our institution is an institution of learning, benevolence and charity, within the true intent and meaning of the Constitution and act of the Legislature aforesaid and that the said act is a valid and constitutional enactment, and a decree to this effect was thereupon entered accordingly. If this decree should be affirmed by the court of last resort, the case would, we are advised, stand as it was at the date of our said former acceptance, and in that event we would be entitled to receive from the complainant a transfer and conveyance of the estate, personal and real, constituting the residuary estate of the said testator, under and subject to the payment of the said annuities, to be held, used and enjoyed by us, to, for and upon the said several uses, trusts, intents and purposes, by him, the said testator, declared of and concerning the same.

If the said decree should be reversed, and it be finally determined that our library building is liable to taxation, then we are advised that the question of reconsidering our acceptance should be submitted to our members for such further action as they may take in the premises.

And we pray to be hence dismissed, &c.

William Henry Rawle,
R. C. McMurtrie,
Counsel for said Defendant.

Lloyd P. Smith, treasurer and librarian of the Library Company of Philadelphia, being duly affirmed, says that the facts set forth in the foregoing answer are true, to the best of his knowledge and belief.

LLOYD P. SMITH.

Affirmed and subscribed before me, this twenty-ninth day of December, A. D. 1877.

WM. H. MYERS,
Notary Public.

[SEAL]

EXHIBIT A.

To the Board of Directors of the Philadelphia Library Company,

Gentlemen:—By the will of Dr. James Rush (a copy of which I enclose), it is provided as follows concerning his residuary estate:—

"And upon this further trust, so soon as this building is completed and ready for occupation, then in trust to convey the same, with the lot of ground whereon it is erected, unto 'The Library Company of Philadelphia aforesaid and their successors, for the uses and purposes of their library, and for no other use or purpose whatever,' subject to certain trusts, conditions, provisoes and restrictions as are therein set forth."

As some time may be required for the proceedings which will be necessary to entitle your corporation to receive said conveyance, if you elect to accept under the will the devises and bequests in your favor, subject to the conditions, &c., imposed, it may be well for you to know that in the latter part of the coming month the building erected in pursuance of the directions of the will will be completed and ready for occupation.

At that time, if I am advised by counsel that everything has done by you necessary under the will, and am informed that you desire to receive said building and a conveyance of the residuary estate, I will be prepared to do what is required of me under the will.

I am now preparing an account of my administration under the will, which will shortly be filed with the Register of Wills. It will show that I have substantially used all the personal property and the proceeds of the real estate which I have converted, in discharging the duties imposed upon me.

In addition to this, certain ground-rents still unsold will be required to pay what is due for the construction of the library building.

In order that you may know how much of the estate remains unsold, I send you a list of the same, excluding the ground-rents referred to, which I must convert.

The property specified in this schedule I will be able to convey at the time I deliver the building.

Yours, respectfully,

HENRY J. WILLIAMS,
Executor of Dr. J. Rush.

June 4th, 1877.

STATEMENT OF THE REAL ESTATE BELONGING TO THE ESTATE OF DR. JAMES RUSH, DECEASED.

May 14th, A. D. 1877.

NO.	LOCALITY.	TAX VALUATION.	YEARLY RENT.
1200	Callowhill street, .	$6,000 00	$700 00
1202	" "		400 00
1204	" "	20,000 00	450 00
1206	" "		400 00
1208	" "		400 00
4	Berlin street,		192 00
6	" "	9,000 00	168 00
415	South "		900 00
1	Clarges court, . .		144 00
2	" " .		96 00
3	" " .		96 00
4	" " .		96 00
5	" " .		84 00
6	" " .		96 00
62	North Front street, .	12,000 00	1,000 00
64, 66	" " .	16,000 00	1,200 00
	Carried forward,	$63,000 00	$6,422 00

	Brought forward,	$63,000 00	$6,422 00
139	North Front street,	7,000 00	400 00
141	" " .	11,000 00	600 00
139 (rear)	" " .		150 00
141 (rear)	" " .		250 00
239	" "		400 00
239 (rear)	" "	14,000 00	100 00
241	" "		600 00
1	John's court, . .		204 00
2	" " . .		204 00
3	" " . .		204 00
4	" " . .		204 00
5	" " . .		204 00
6	" " . .		204 00
7	" " . .		180 00
8	" " . .		156 00
9	" " . .		168 00
614, 616	Market street, . .	65,000 00	5,000 00
443	Magnolia street, .	1,600 00	168 00
445	" " .	1,600 00	168 00
139	New street, . .	2,500 00	300 00
516	Vine street, . .	9,000 00	400 00
17	Pennsylvania avenue,	1,200 00	150 00
19	" "	1,200 00	150 00
21	" "	1,200 00	150 00
25	" "	1,200 00	150 00
27	" "	1,200 00	150 00
29	" "	1,200 00	150 00
21	North Second street,		750 00
23	" "	36,000 00	300 00
25	" "		900 00
10	South street, . .	8,000 00	800 00
N. E.	corner Eighth and Cherry streets, .	18,533 33	1,600 00
	Carried forward,	$244,433 33	$21,936 00

	Brought forward,	$244,433 33	$21,936 00
148	North Eighth street,	16,000 00	1,800 00
150	" " "	16,000 00	1,800 00
152	" " "	17,000 00	2,100 00
259	North Ninth street, .	10,500 00	960 00
330	" " "	5,500 00	500 00
332	" " "	5,500 00	400 00
334	" " "	5,500 00	400 00
1323	Carpenter street and Library lot, . .	200,000 00	300 00
		$520,433 33	$30,196 00

N. B.—This income is subject to the following charges:—

Taxes (paid for A. D. 1877),	$10,950 00
Annuities, ...	5,680 00
Total, . . .	$16,630 00

Of these taxes, $4500 are charged on the library building, which will probably be released when occupied as a public library.

The tenants are asking for a reduction in their rents, which I shall probably grant for this year, which may cause a diminution in the income.

Henry J. Williams,
Executor of Dr. J. Rush.

June 4th, 1877.

PHILADELPHIA, May 28th, 1877.

REPORT TO HENRY J. WILLIAMS, ESQ., OF COST OF RIDGWAY LIBRARY, SHOWING THE BALANCES DUE FROM THIS TIME UNTIL COMPLETION OF THE WORK AS NEARLY AS IT IS PRACTICABLE TO ASCERTAIN THEM.

There has been expended on the building and grounds up to February 15th, 1877, the date of last report, . . .		$611,534 00
There has since been paid to the various contractors, ...		28,499 00
To myself, ...		1,000 00
There remains to be paid :—		
To Kemp & Garrison, . .	$12,000 00	
Philadelphia Architectural Iron Company, . .	500 00	
Samuel B. Drake, balance for paving, &c., . .	3,600 00	
Pancoast & Maule, including fuel and running of the steam boiler,	1,390 00	
L. W. Leeds for inspection of do., . . .	150 00	
H. Barker & Brothers, balance on original contract, ...	938 00	
Architect, . . .	2,000 00	
		20,578 00
		$661,611 00

June 7th, 1877.

Sir:—I am instructed by the directors of the Philadelphia Library Company to send you the enclosed resolution, which was passed this morning at a meeting of the board.

The questions connected with taxation therein referred to will, it is expected, take the form of a bill filed to restrain the Collector of Delinquent Taxes from proceeding, as he threatens, to collect taxes upon the assessed value of the library building, and it is hoped that such action will be had as will obtain their settlement by the Supreme Court during the ensuing autumn. I have the honor to be,

Very respectfully, your obedient servant,

William Henry Rawle.

Henry J. Williams, Esq.

Resolution Enclosed.

"*Resolved,* That the secretary address to Mr. Williams an acknowledgment of his communication of the 4th instant, and inform him of the existence of the questions connected with taxation, of which a decision is expected in September next, and that if decided in favor of the exemption of the property of the library company, the likelihood that the members will accept the trust of the Rush bequest will be considerably increased, and therefore that a postponement of a decision by the library company, if agreeable to Mr. Williams, would be advisable.

"And further, what, if any, additional steps are, in his opinion, requisite to enable the library company to accept the trusts of the will of Dr. Rush."

Gentlemen:—I acknowledge the receipt of the letter of your secretary, dated June 7th, 1877, enclosing a resolution of the board of directors of the Philadelphia Library

Company, in relation to the acceptance of the library building, erected under the will of Dr. J. Rush.

As there seems to be some doubt on this subject, I have determined, under the advice of counsel, to have the question settled by the court, and shall therefore file a bill, praying instructions in this matter, so soon as it can be prepared.

I would not presume to say whether the library have fulfilled the demands of Dr. Rush's will or not, but will leave it to be decided by the proper authority.

Very respectfully, yours,

HENRY J. WILLIAMS,
Executor of Dr. Rush.

TO THE DIRECTORS OF THE
PHILADELPHIA LIBRARY COMPANY.
July 1st, 1877.

PHILADELPHIA, July 5th, 1877.

DEAR SIR:—I am instructed by the library company to acknowledge the receipt of your note of the 1st instant, and to express their cordial desire to do everything to facilitate the settlement of the question you refer to in the manner most agreeable to yourself.

I am, sir, very respectfully,

WILLIAM HENRY RAWLE.

HENRY J. WILLIAMS, ESQ.

EXHIBIT B.

JANUARY 4th, 1870.

DEAR SIR:—

Mr. Williams has handed me, as counsel for the estate of Dr. Rush, the resolution of the Board of Directors of

the Library Company of Philadelphia, accompanied by a proposed act of Assembly.

While the latter, in its present shape, cannot be considered as committing the executor, we see no objection to its presentation to and passage by the Legislature.

Truly, yours,

W. STRONG,
WM. F. JUDSON.

R. C. McMurtrie, Esq.

EXHIBIT C.

To the Honorable the Court of Common Pleas for the City and County of Philadelphia:

The memorial of the Library Company of Philadelphia respectfully represents to your honorable court that, by an act of Assembly entitled "An act relative to the Ridgway Branch of the Philadelphia Library," approved the twenty-third day of February, A. D. 1870, it was enacted "That the Library Company of Philadelphia be, and they are hereby authorized to act as trustees for the Ridgway Branch of the Philadelphia Library, and the trust pertaining thereto, under the last will and codicils of James Rush, late of the city of Philadelphia, doctor of medicine, upon the conditions and provisions therein contained, without limitation as to the yearly value or income of the said trust estate, but in such manner that the real and personal property of the company, including such books, pictures, statues and other works of literature and art as now are, or shall hereafter be, held by them in their own right, or on any other or different trusts, shall be in no wise affected thereby, but shall remain and be under

their entire and exclusive control and disposition; and the said company are hereby empowered, after acceptance of this act by the members of the said company, to apply, from time to time, to the Court of Common Pleas for the City and County of Philadelphia, for such further amendments to the charter of the company as may be necessary to carry into effect the conditions and provisions of the said will and codicils in accordance with the directions of this act."

That at a meeting of the members of the said company, duly convened on the twenty-fifth day of May, A. D. 1870, it was resolved,—

"That the Library Company of Philadelphia do accept the provisions of the act of the General Assembly of the Commonwealth, approved the twenty-third day of February, A. D. 1870, entitled 'An act relative to the Ridgway Branch of the Philadelphia Library.'

"*Resolved*, That the directors be requested to apply to the Court of Common Pleas of Philadelphia County for the following amendments to the charter of the company, to wit:—"

(Prout the same, *supra, page 5*.)

Your petitioners, therefore, pray that the said amendments may be allowed to be made to the charter of the said company and form a part thereof, according to the act of Assembly in such case made and provided.

W. E. Whitman, [seal]
Secretary.

City and County of Philadelphia, *ss.*

Be it Remembered, That at a Court of Commom Pleas, held at Philadelphia, on the thirty-first day of October, A. D. 1870, the above and foregoing amendments to the charter of "The Library Company of Philadelphia" were presented to the said court for its approval. Whereupon

the court ordered the same to be filed in the prothonotary's office of said court, and that public notice be given of the application agreeably to the provisions of the act of Assembly in such case made and provided.

And now, to wit, December 10th, A. D. 1870, due proof having been exhibited of the publication of notice of said application agreeably to the order of the court, and no cause to the contrary being shown, and it appearing to the court that the said amendments and alterations are and will be lawful and beneficial, on motion of R. C. McMurtrie, Esquire, it is ordered and decreed that the said alterations, improvements and amendments shall be deemed and taken to be a part of the instrument upon which said corporation was formed and established, to all intents and purposes as if the same had been originally made part thereof. And it is further decreed that the said amendments be recorded in the office for recording of deeds in and for said county.

Witness my hand and the seal of the said court, this sixth day of March, A. D. 1871.

R. DONAGAN,
[SEAL] *Prothonotary.*

CITY OF PHILADELPHIA, *ss.*

I, John A. Houseman, Recorder of Deeds, &c. for the said city, do hereby certify that the within and foregoing is a true and correct copy of an instrument of writing found of record in my office, in Miscellaneous-book J. A. H., No. 1, page 145.

Witness my hand and seal of office, this thirtieth day of March, A. D. 1871.

J. A. HOUSEMAN,
[SEAL] *Recorder.*
Per M. MYERS.

In the Court of Common Pleas, No. 1, of Philadelphia County.

Henry J. Williams, Executor and Trustee of the will of James Rush, M. D., Complainant, and *The Library Company of Philadelphia* et al., *Defendants.*	September Term, 1877. No. 1296.

DECREE.

And now, this thirteenth day of February, A. D. 1878, this cause came on to be heard upon bill and answers; whereupon it is considered by the court that the complainant is entitled to the discovery prayed by him, and also that the defendant The Library Company of Philadelphia, is entitled to knowledge of every material fact touching the condition of the estate and its present and future liabilities, before it finally elects to accept or decline the devise and bequest of the testator. Wherefore, the cause is referred to Samuel Robb, Esquire, as Master, to enquire and report:—

1. Whether the annuities bequeathed by the testator to the other defendants will be sufficiently secured and provided for by a conveyance of the unexpended estate of the testator to the person or corporation entitled thereto, subject to their payment.

2. Whether the Library Company aforesaid has or has not conformed to and complied with the conditions prescribed by the testator under which it was to hold the said devise and bequest, and if not, what other and further action should be taken by it in the premises.

3. Whether the complainant has or has not done and performed all things necessary to entitle him to call upon the said defendant to elect to accept or decline the said devise and bequest.

4. Whether the said defendant is in possession of such material facts touching the condition of the estate and its present and future liabilities, as ought to enable it so to elect; and if not, what are such material facts; and if there be a question whether or not such election has been already made or should now be compelled, that the Master report the circumstances upon which such question is raised, with his opinion thereon, and in what manner and form such election, if not already made, should be made accordingly.

5. Such other facts as may be material in the premises.

6. And in case he shall report that the said defendant is entitled to receive from the complainant a transfer and conveyance of the said residuary estate, he shall settle and report the form thereof, and the conditions and covenants in that behalf prescribed by the will of the testator.

7. In case he shall report that the said defendant is not entitled to receive from the complainant such transfer and conveyance of the said residuary estate, he shall report the form of such decree as shall be necessary to be made in the premises.

Either party to be at liberty to apply, &c.

PER CURIAM.